

ENTERED

December 14, 2017

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

MARIA LUISA FLORES ARTEAGA, §
Plaintiff, §

v. §

REX TILLERSON, Secretary of State, §
et al., §
Defendants. §

Case No. 1:16-cv-233

**MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**

The Court is in receipt of Defendants' "Motion to Dismiss Plaintiff's Claims Under the Administrative Procedure Act Pursuant to FED. R. CIV. P. 12(b)(1) and 12(b)(6) (hereinafter, Defendants' "Motion" or "Motion to Dismiss"). Dkt. No. 27. Defendants' Motion was filed on September 27, 2017. *Id.* Plaintiff has not filed a response. Defendants' Motion should be granted because: (1) this Court lacks the subject matter jurisdiction to review Plaintiff's claim under the Administrative Procedure Act ("APA"); and, (2) the United States is not a proper party to this lawsuit.

Plaintiff's Third Amended Complaint for Declaratory and Injunctive Relief asserts two claims which were also asserted by the plaintiff in *Gutierrez v. Tillerson, et al.*, No. 17-cv-111, 2017 WL 6044108 (S.D. Tex. Nov. 15, 2017), *adopted*, 2017 WL 6054941 (S.D. Tex. Dec. 6, 2017). Compare Dkt. No. 1 at p. 2, ¶ 6 and pgs. 6-7, with *Gutierrez v. Tillerson*, Dkt. No. 1 at p. 2, ¶ 5 and pgs. 10-11. In *Gutierrez*,

the Court found that both claims were subject to dismissal. *Gutierrez*, 2017 WL 6044108, at *6-8. The Court found Gutierrez's claim against the United States was subject to dismissal because the United States is not a proper party in a suit filed under 8 U.S.C. § 1503(a). *Id.* at 7-8. More specifically, because the plain language of § 1503 does not authorize actions against the United States, the Court found that it lacked subject matter jurisdiction to hear Gutierrez's claim against the United States. *Id.* Additionally, the Court found that it lacked subject matter jurisdiction over Gutierrez's claim for relief under the APA. *Id.* at 7 (noting that Gutierrez's APA claim was precluded by the existence of an adequate remedy available to her under § 1503(a)).

Plaintiff in the instant case provides no facts or authority to distinguish her claims from those brought by Gutierrez, and nothing is present here to command a different result from the result reached in *Gutierrez*. Accordingly, for the reasons provided by the Court in *Gutierrez*, which this Court incorporates here by reference, it is recommended that the Court **GRANT** Defendants' Motion to Dismiss. Dkt. No. 27.

Notice to Parties

A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation within fourteen days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobj ected-

to proposed factual findings and legal conclusions accepted by the district court, provided that the party has been served with notice that such consequences will result from a failure to object. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415 (5th Cir. 1996).

Signed on this 14th day of December, 2017.



Ignacio Torteya, III
United States Magistrate Judge